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SUPREME COURT, U. S.

No. 38

In The

United States Supreme Court

OCTOBER TERM, 1955

RAYMOND C. ARMSTRONG,
Petitioner,

v.

MARY R. ARMSTRONG,
GENERAL MOTORS CORPORATION, et al.,
Respondents.

SUPPLEMENT TO BRIEF FOR MARY R. ARMSTRONG, RESPONDENT

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As a supplement to the brief of the respondent Mary R. Armstrong, we attach excerpts from the brief filed in the trial court on behalf of the petitioner.

WALTER K. SIBBALD,
Attorney for Mary R. Armstrong, Respondent.

COURT OF COMMON PLEAS

DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

No. A-131104

MARY R. ARMSTRONG,
Plaintiff,

vs.

RAYMOND C. ARMSTRONG, et al.,
Defendants.

BRIEF ON BEHALF OF DEFENDANT RAYMOND C. ARMSTRONG

We agree with counsel for plaintiff that this case presents two prime questions, namely: (1) Is plaintiff entitled to a divorce? (2) Should a division of property be allowed to plaintiff? Our answer to both questions is in the negative

These two broad questions involve incidental questions. The Court having listened patiently and attentively to the testimony and having the exhibits, we do not intend to go into detail as to the evidence but will merely state briefly, in connection with the argument, the conclusions which we believe the evidence justifies.

I

PLAINTIFF IS NOT ENTITLED TO A DIVORCE

(a) The Florida divorce decree is binding upon plaintiff, is res judicata, and cannot be attacked collaterally by plaintiff in this Court.

(b) The Florida decree bars the present action of plaintiff for divorce in Ohio.

(c) Even if the Florida divorce decree were invalid, plaintiff has not proven in this action, a case for divorce against defendant.

(Argument Omitted.)

II

THE QUESTION OF THE GRANTING OF ALIMONY OR DIVISION OF PROPERTY

If plaintiff's action is barred by the Florida decree, as we contend, then this court can only award alimony, unless the evidence would have justified, but for the Florida decree, the granting of the divorce to plaintiff, in which case the Court would be authorized to make a division of property, as was done in the *Slapp* case. We contend that even if defendant had not been divorced in Florida, the evidence in this case would not justify this Court granting a divorce to plaintiff and that therefore the only question before the Court, is the allowance of alimony: *Durham* v. *Durham*, *104 Oh. St. 7*; *Davis* v. *Davis*, *42 Oh. L. Abs. 105*. Whether the Court decides to grant any alimony to plaintiff or to make any division of the property, we ask the Court to consider the following facts, deducible from the evidence in this case: (1) Plaintiff deserted defendant without cause; (2) Defendant through his hard work over

the years and his business ability created the estate that now exists; (3) Plaintiff did not bring anything to the marriage, did not advance any money to him for his business ventures or help him in his business; (4) Her actions in converting to her own use the contents of the safe deposit boxes and withdrawal of the monies from the joint bank accounts; (5) The ample provision that defendant made for plaintiff during their married life and particularly in placing in the joint names large amounts of real estate, much of which he received from his father and brothers, and the proceeds of a mortgage from the sale of real estate which was in his own name, the gifts of jewelry for her personal use, etc.

The Court should also take into consideration the fact that there is at present in the Sheriff's office an amount in excess of $20,000.00, the proceeds of the sale of real estate in the partition case pending in this Court, of which plaintiff will receive one-half, together with one-half of the proceeds of the sales of lots still to be sold in the partition case, which will probably give her several thousand dollars additional.

With reference to the home previously occupied by the parties in Miami, Florida, and the contents therein, we submit that that should not be taken into consideration in this case, as that has already been settled by the Florida decree, that Court having jurisdiction over the property in Florida.

The real estate in Florida was owned by an "estate by the entirety," by which a husband and wife each own an estate in the property. However,

> Estates by the entirety are dependent on the marital relation for continuance, both spouses being considered equally interested in the res, but the interest is not severable. Generally, absolute divorce destroys estates by entireties and converts husband and wife

into joint tenants or tenants in common, as if never married, in which relation they are equally interested, but partition may be secured by either." *Straus* v. *Straus*, *148 Fla. 23*.

See also *Kollar* v. *Kollar*, *155 Fla. 705*, *Sec. 689.15 Fla. Stat. (1941)*.

In the case of *Lovejoy* v. *Lovejoy*, *160 Fla. 652*, the Court awarded property which had been in the joint names of husband and wife, to the husband in connection with a divorce decree and in the most recent Florida case of *O'Connell* v. *O'Connell*, *45 So. (2) 882*, decided in 1950, it was held:

> "(2) Where property is purchased by husband and deeded to husband and wife jointly, an estate by the entirety is created * * *"
> "(3) Court justified in awarding to wife an interest in the joint property on divorce."

If alimony is to be awarded, we feel that $200.00 to $250.00 a month would be very reasonable and ample for plaintiff's support, when considered in connection with what she has already received and will receive as her half interest in the joint ownership property.

If the Court should feel that a division of property is justified in this case, then we feel that if the Court would grant plaintiff 325 shares of the *old* General Motors stock, which can be turned in for 650 shares of the new stock, which new stock pays $4.00 a share, she will have an income of $2,600.00 per year plus the principal value of the stock, the market value of which is $62.00 per share, or $40,300.00.

In any event, whether the Court feels that it is proper to grant plaintiff alimony or to make a division of property, plaintiff should be ordered to account to defendant for one-half of the monies taken from the joint bank

accounts, one-half of the Government bonds and all of the cash which she took from the safe deposit boxes and all of the jewelry (other than her personal jewelry) and a ..... name only, which plaintiff took from the joint safe deposit boxes.

Respectfully submitted,

JULIUS R. SAMUELS and,
BENJAMIN S. SCHWARTZ,
Attorneys for Defendant;
Raymond C. Armstrong.